

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ROSHAWN MAEBERRY, ID# 1006648, §  
§  
Plaintiff, §  
v. § Civil Action No. 3:06-CV-1101-L  
§  
BOB JOHNSON, §  
§  
Defendant. §

**ORDER**

Before the court are the Supplemental Findings, Conclusions and Recommendations of the United States Magistrate Judge. No objections to the magistrate judge's findings and conclusions were filed. Also before the court is Plaintiff's Motion in Request to Be Relieved of Further Payment and/or 20% Deduction from his Inmate Trust Fund Account, filed April 23, 2007. The court had referred Plaintiff's motion to Magistrate Judge Irma C. Ramirez by order of April 24, 2007. The court hereby **vacates** the April 24, 2007 order and considers Plaintiff's motion.

**I. Plaintiff's Motion**

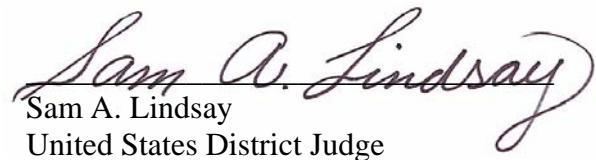
Plaintiff has moved the court to relieve him from further payment or deduction from his inmate trust fund account to pay the filing fee for this action. Plaintiff's argument is based upon his claim that the magistrate judge held that he had brought section 1983 claims. Mot. at 2. His argument is incorrect; the magistrate judge specifically found that "plaintiff brings his claims under state law and not under § 1983." Findings and Recommendations, at 2 n.1. Moreover, regardless of whether his claims were brought under state law or section 1983, Plaintiff is still required to pay the filing fee. 28 U.S.C. § 1915(b). Accordingly, the court **denies** Plaintiff's motion.

**II. Magistrate Judge's Findings and Recommendations**

The magistrate judge found that Plaintiff's claims arise solely under state law and that there is no federal statutory or constitutional basis for his claims. The magistrate judge also found that Plaintiff did not allege diversity of citizenship. The magistrate judge recommended dismissal of Plaintiff's claims because the court lacks subject matter jurisdiction over his claims.

Having reviewed the pleadings, file and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court therefore **dismisses without prejudice** Plaintiff's complaint.

**It is so ordered** this 26<sup>th</sup> day of April, 2007.

  
Sam A. Lindsay  
United States District Judge